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NO. 84-144

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1984

COASTAL GEORGIA AUDUBON SOCIETY,  
*Petitioner,*

v.

MIKE P. STURDIVANT, EARLE F. JONES and  
SHORE ASSISTANCE COMMITTEE of the  
DEPARTMENT OF NATURAL RESOURCES  
of the STATE OF GEORGIA,

*Respondents.*

ON PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT OF GEORGIA

BRIEF IN OPPOSITION BY THE RESPONDENTS

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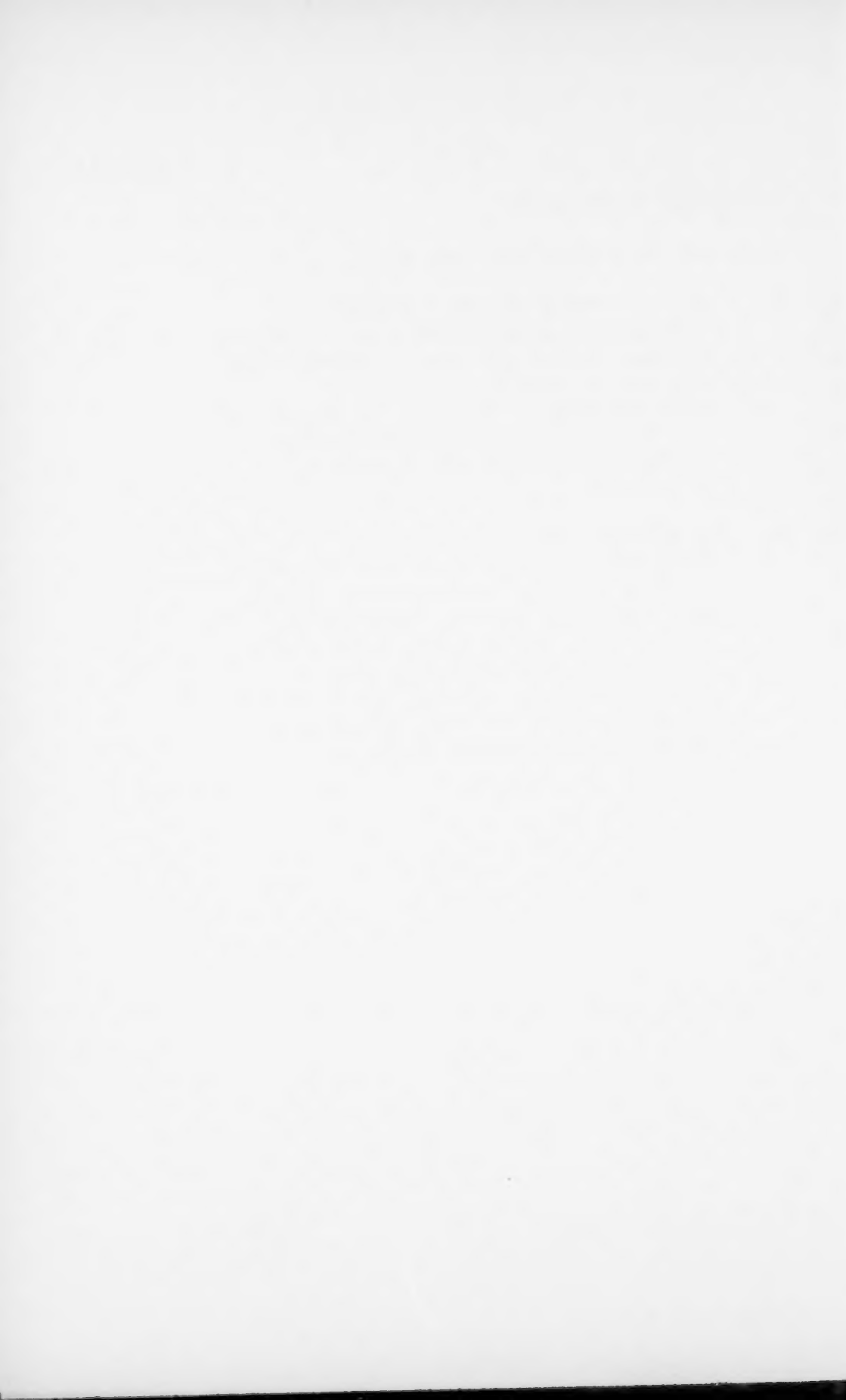
## QUESTION PRESENTED

Whether the Supreme Court of Georgia correctly dismissed Petitioner's appeal from the decision of the Superior Court of Glynn County on the grounds that Petitioner had not filed an application for discretionary appeal as required by Georgia law.



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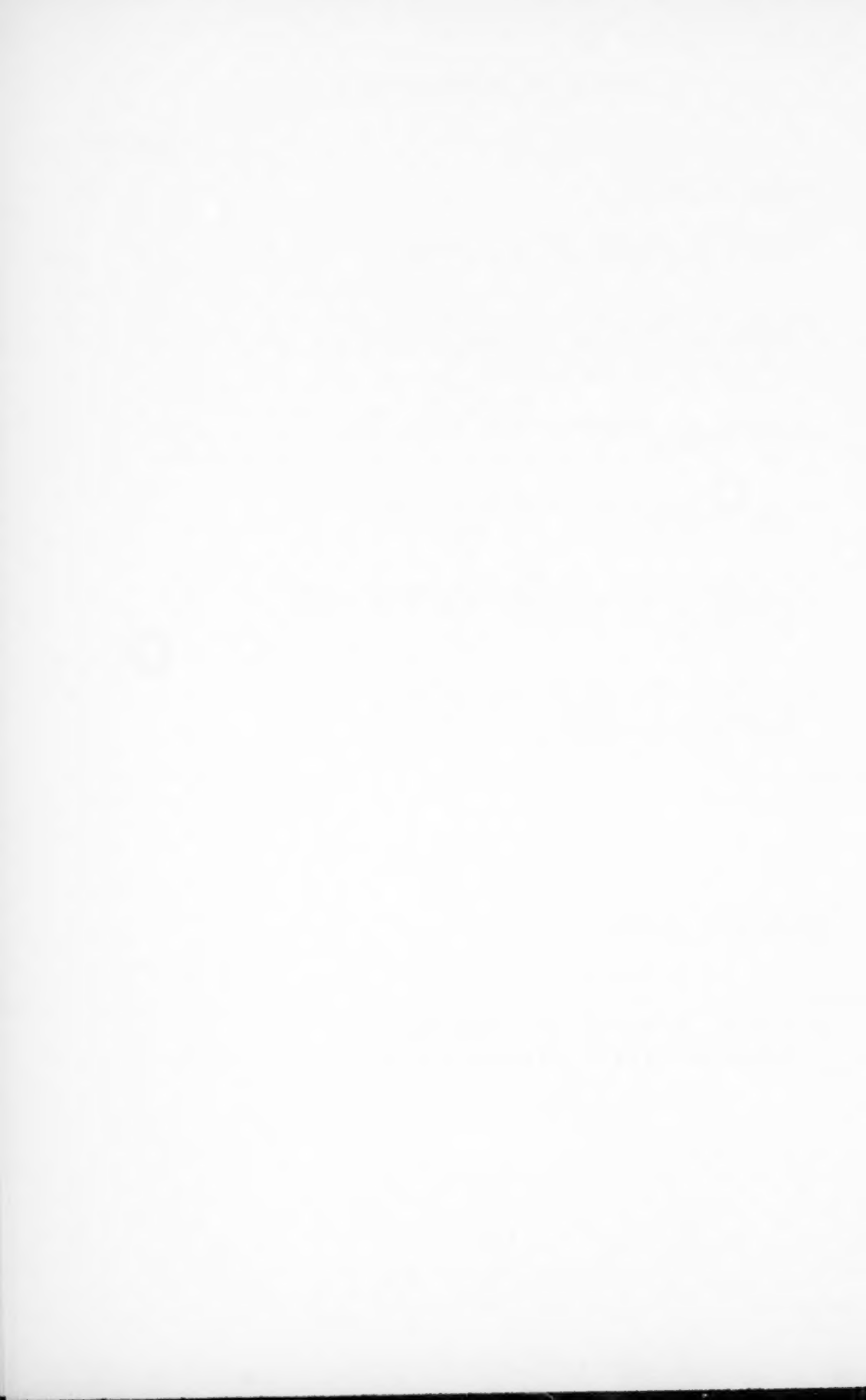
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PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF GEORGIA

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BRIEF IN OPPOSITION BY THE RESPONDENTS

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The Respondents Mike P. Sturdivant, Earle F. Jones and the Shore Assistance Committee of the Department of Natural Resources of the State of Georgia (hereinafter collectively referred to as the "Respondents") urge the Supreme Court to deny the Petition for a Writ of Certiorari to review the opinion of the Supreme Court of Georgia entered in the above case on



April 18, 1984. The decision of the Supreme Court of Georgia is clearly correct, in conformity with the laws of Georgia and is not a violation of Petitioner's due process rights under the Fourteenth Amendment to the United States Constitution.

REASONS FOR DENYING THE WRIT

- A. THE SUPREME COURT OF GEORGIA CORRECTLY DISMISSED PETITIONER'S APPEAL FROM THE DECISION OF THE SUPERIOR COURT BASED ON PETITIONER'S FAILURE TO FILE THE APPLICATION FOR DISCRETIONARY APPEAL REQUIRED BY O.C.G.A. § 5-6-35.
- 

It is Petitioner's contention that because the Legislature of the State of Georgia has conferred a "right" of appeal from the superior court review of an administrative decision that the Supreme Court of Georgia may not deny the "right" of appeal by requiring Petitioner to apply for an order allowing such an appeal. A reading of O.C.G.A. §§ 50-13-20 and 5-6-35 shows, however, that the legislature has not granted an unrestricted right of appeal,

and that it was a statutory, not judicial, requirement that Petitioner file a request for an order allowing appeal to the Supreme Court of Georgia.

The statute provides:

"An aggrieved party may obtain a review of any final judgment of the superior court under this chapter [Administrative Procedure] by the Court of Appeals or the Supreme Court, as provided by law" (emphasis supplied).

O.C.G.A. § 50-13-20.

O.C.G.A. § 5-6-35 provides that an appeal from a decision of a superior court reviewing the decision of an administrative agency is made by filing a request for an order granting an appeal. The language at this section is mandatory. Thus, it was not the supreme court which required that a request for discretionary appeal be filed; this was a clear and unambiguous statutory requirement, and the court had no jurisdiction to hear the appeal unless such

an application was made and granted. The dismissal of Petitioner's appeal by the Supreme Court of Georgia was clearly in conformity with the laws of Georgia. See, e.g., Hogan v. Taylor County Board of Education, 157 Ga. App. 680, 278 S.E.2d 106 (1981). As a result, the Petition should be granted only if it appears that Georgia's statutory law has infringed Petitioner's constitutional rights.

B. A STATE LEGISLATURE MAY, CONSISTENT WITH THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, FORMULATE APPELLATE PROCEDURE AND PROVIDE FOR A DISCRETIONARY APPEAL FROM LOWER COURT REVIEW OF THE DECISIONS OF ADMINISTRATIVE AGENCIES.

The right of appeal is not essential to due process. Lindsey v. Normet, 405 U.S. 56, 77 (1972); National Union of Marine Cooks and Stewards v. Arnold, 348 U.S. 37, 43 (1954). Furthermore, a state may formulate the procedure and conditions of appeal. Carter v. State of Illinois,

329 U.S. 173, 175 (1946); Lott v. Pittman, 243 U.S. 588, 591 (1916). If the state legislature may create or deny the right to an appeal, and may formulate appellate procedure, it is clear that Petitioner's due process rights were not infringed simply because the Supreme Court of Georgia adhered to statutory requirements and dismissed Petitioner's case.

The decision of the superior court was itself a review of the decision of the Administrative Review Committee of the Department of Natural Resources. Petitioner is in effect contending that due process requires an unrestricted right to an appeal from another appellate proceeding. Such a conclusion is not warranted by either authority or common sense. The state has an interest in allocating its judicial resources, and one of the purposes of the discretionary appeal statute (O.C.G.A. § 5-6-35) was to expedite appellate court review of superior court decisions reviewing rulings of administrative agencies without having to issue an opinion in every

such case. Tri-State Building & Supply, Inc. v. Reid, 251 Ga. 38, 302 S.E.2d 566 (1983). Petitioner has already been afforded an evidentiary hearing and a judicial review of that hearing. Certainly Petitioner's right to due process of law is not violated if he is not granted the right to an additional direct appeal. Petitioner had the statutory right to petition for a discretionary appeal and failed to exercise it.

The Petition for Certiorari raises no viable constitutional concerns, and Respondents respectfully request that Petition for Certiorari in this case be denied.

Respectfully submitted,

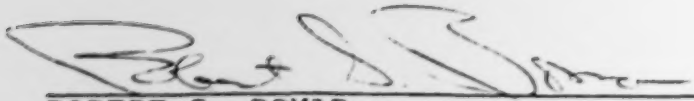
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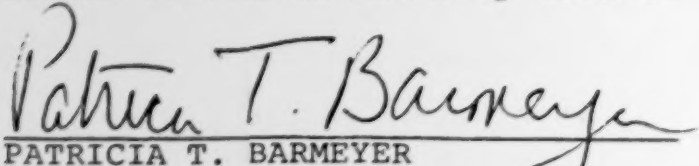
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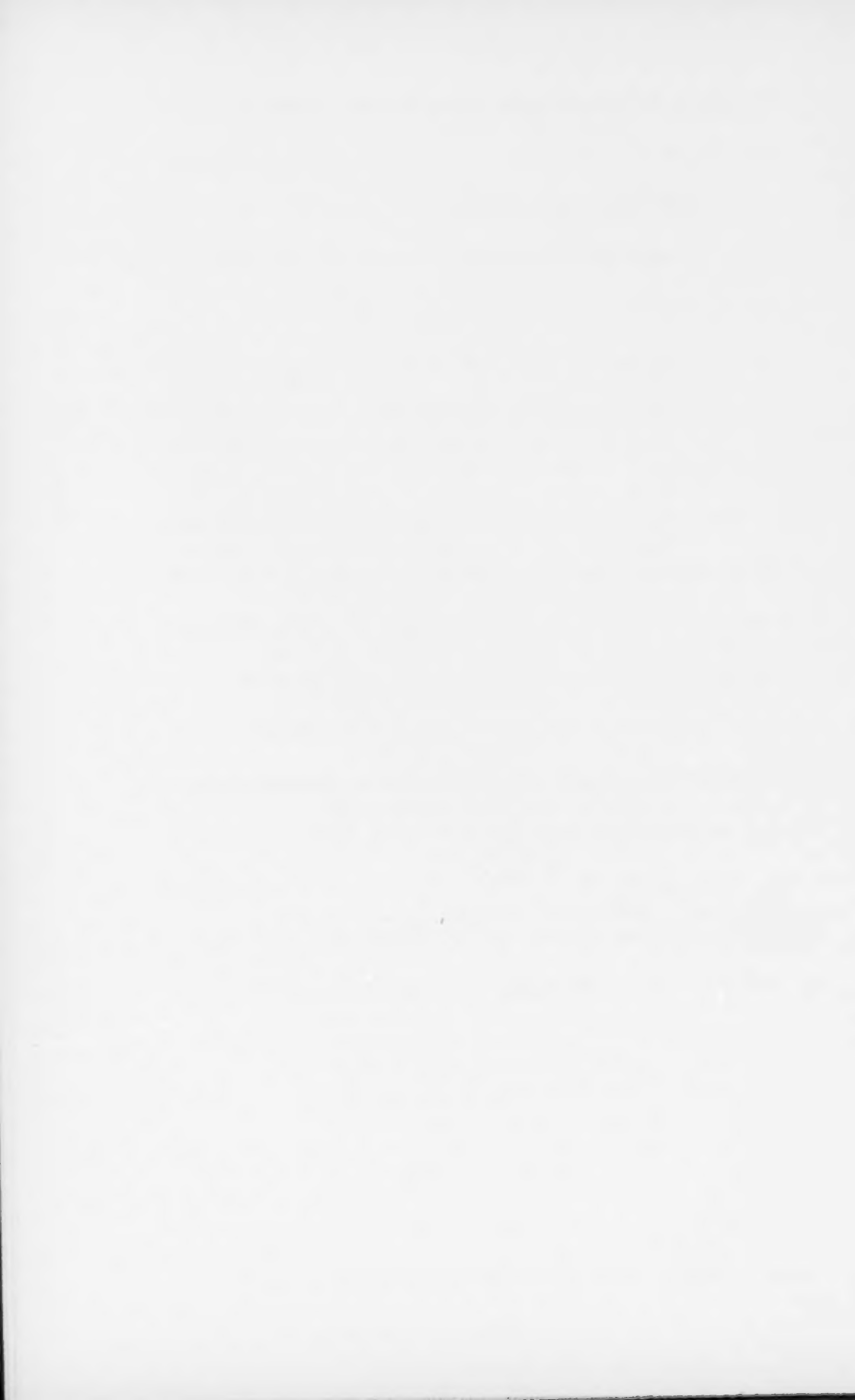
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CERTIFICATE OF SERVICE AND MAILING

I, PATRICIA T. BARMEYER, a member of the bar of the Supreme Court of the United States and counsel of record for the Respondent Shore Assistance Committee of the Department of Natural Resources of the State of Georgia, hereby certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of this Brief in Opposition by the Respondents upon the Petitioner by depositing three copies of same in the United States mail with proper address and adequate postage to:

MORETON ROLLESTON, JR.  
2604 First National Bank Tower  
Atlanta, Georgia 30383

I further certify and affirm that in accordance with the rules of the Supreme Court of the United States, I have this day mailed forty (40) copies of this



Brief in Opposition by the Respondents to  
the Clerk of the U. S. Supreme Court with  
proper address and adequate postage, as  
follows:

Clerk, U. S. Supreme Court  
1 First Street, N. E.  
Washington, D. C. 20543

This 16TH day of August, 1984.

*Patricia T. Barmeyer*  
PATRICIA T. BARMAYER  
Senior Assistant Attorney General

Sworn to and subscribed  
before me this 16TH day  
of August, 1984.

*Betty L. Stephens*  
NOTARY PUBLIC

Notary Public, Georgia State at Large  
My Commission Expires Nov. 29, 1986

MY COMMISSION EXPIRES: \_\_\_\_\_

Notary -  
My Comm: \_\_\_\_\_